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Charter for intelligence agencies inches on in Congress

[Rep. Murphy, a Chicago Democrat, is chairman of the U.S. House Intelligence Subcommittee on Legislation.]

Government officials, lawyers and scholars met at the University of Chicago last month to discuss the need for or wisdom of enacting a comprehensive legislative charter for the CIA and other U.S. intelligence agencies.

Past revelations have underscored the need to establish greater accountability for those agencies conducting intelligence-gathering operations. In the aftermath of the disclosures, then-President Ford issued an executive order streamlining the intelligence chain-of-command to insure presidential knowledge of and responsibility for intelligence activities. Ford also prohibited political assassination and drug experimentation on unsuspecting subjects.

The House and Senate created permanent committees to oversee federal intelligence agencies in 1976-77.

In 1978 President Carter issued an executive order that, like Ford's, sought to make government officials more accountable for their decisions. It also continued the ban on assassination attempts and improper drug testing.

That same year Congress took an important step forward in curbing certain intelligence abuses when it passed a bill requiring search warrants for most national security wiretaps. Until this legislation was signed into law, presidents were able to order electronic surveillance without a warrant in "national security" cases. The new law requires the government to obtain a search warrant so that Americans are protected from unreasonable searches and seizures, as guaranteed under the Fourth Amendment.

This year Congress is moving to pass a bill dealing with another intelligence issue—"graymail." This refers to a defendant's threat at his trial to disclose classified documents, thus putting the government in the dilemma of having to disclose the information or drop the case. The bill, which I sponsored in the House, would allow a closed, pre-trial

hearing at which a judge could rule on the admissibility and relevancy of the information.

What remains to be done in 1980 is the enactment of a legislative charter for the intelligence agencies. Five years after the intelligence horror stories were brought to light, a comprehensive charter has still not been approved by Congress. Why? One reason is that international developments, such as Iran's holding of the American hostages and Russia's invasion of Afghanistan, have caused many legislators to question the wisdom of "restricting" these agencies.

A more fundamental reason is the difficulty of drafting legislation that balances the interests of national security with civil liberties.

While no comprehensive charter will emerge from Congress this year, a scaled-down version of the proposal was approved by the Senate 89-1 on June 3, and most probably will soon pass the House. Although the bill falls far short of the originally planned charter, it is still an important piece of legislation.

The bill would give Congress, for the first time, the right to be "fully and currently informed" of "any significant anticipated intelligence activities." [This same phrase, used in the Atomic Energy Act of 1946, enabled a joint House-Senate oversight committee to demand detailed information from the Atomic Energy Commission on its activities.] The legislation would also require the intelligence agencies to provide "any information or material" requested by the intelligence committees. This goes far beyond existing law, which requires that Congress be informed only of the CIA's covert operations.

In addition, the measure would reduce from eight to two the number of congressional committees to which the intelligence agencies would have to report on their activities.

The legislation, to be sure, does not resolve a number of issues: Should the CIA be prohibited from using clergy, journalists and academics in espionage activities? Should surreptitious entries—ones for which no warrant has been obtained—be authorized for intelligence

purposes? Should there be criminal penalties for persons who publicly identify intelligence agents? Should the CIA be exempt from certain provisions of the Freedom of Information Act?

As written, the legislation neither ties the hands of the intelligence agencies nor releases them from congressional or public scrutiny.

The pending bill is significant in that it lays a foundation upon which a more detailed charter can be constructed, if Congress so desires. But it is also important by virtue of establishing the legal principle that Congress has a right to all information concerning intelligence activities. Such a principle is the essence of any worthwhile charter legislation, since it empowers Congress to carry out its responsibility of overseeing the intelligence agencies.

With effective oversight, detailed legislative restrictions may not be necessary; without it, even the most precise restrictions can be easily avoided.